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7 Attorneys for Defendants
8 HSBC MORTGAGE CORPORATION (USA) AND
HSBC BANK USA, N.A.
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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 Philip Wong, Frederic Chaussy, and Leslie
Marie Shearn, individually, on behalf of all
14 others similarly situated, and on behalf of
the general public,

15 Plaintiffs,

16 v.

17 HSBC Mortgage Corporation (USA);
18 HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

19 Defendants.
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Case No. C 07 2446 MMC [ECF]

**DECLARATION OF DANIEL KILFOIL IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR CONDITIONAL CERTIFICATION,
PRODUCTION OF UPDATED CLASS
LIST, AND PARTIAL SUMMARY
JUDGMENT**

Date: February 8, 2008
Time: 9:00 a.m.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

Complaint Filed: June 29, 2007 (Amended)
Trial Date: Not Yet Set

1 I, Daniel Kilfoil, hereby declare and state:

2 1. I have personal knowledge of the facts set forth below. If called as a witness,
3 I could and would testify to the following:

4 2. I am a regional manager employed by HSBC Mortgage Corporation USA
5 ("HSBC Mortgage"). I manage all of the loan officers and sales managers employed by HSBC
6 Mortgage in the Long Island and Queens region in New York. The sales managers report directly to
7 me, and the loan officers report to the sales managers. There are currently two HSBC Mortgage
8 offices in the region. A third HSBC Mortgage office located in Queens closed in April 2007. HSBC
9 Mortgage employs approximately twenty-three (23) loan officers and three (3) sales managers in the
10 Long Island and Queens region.

11 3. The Long Island and Queens region offices of HSBC Mortgage sell only
12 residential loans. The offices do not provide commercial loans.

13 4. My employer is HSBC Mortgage, which is a separate company from HSBC
14 Bank U.S.A., N.A. ("HSBC Bank"). The company name "HSBC Mortgage Corporation USA"
15 appears on all of my work-related documents, including my business cards. HSBC Bank is
16 exclusively a referral source for HSBC Mortgage loan officers in the region. The HSBC Mortgage
17 loan officers in my region do not work for HSBC Bank.

18 5. HSBC Mortgage loan officers in the Long Island and Queens region are
19 compensated on a 100% commission basis. In addition, loan officers receive a recoverable draw.
20 Newly hired loan officers are given a forgiven draw for the first six (6) months of their employment.

21 6. The HSBC Mortgage loan officers in the Long Island and Queens region
22 generally work remotely. They are not required to be in the office. The position of a loan officer at
23 HSBC Mortgage is a sales job, so the loan officers spend a large majority of their time outside of the
24 office developing, meeting and interacting with clients.

25 7. A significant part of loan officers' overall employment rating is based on the
26 amount of mortgages they produce and on their ability to complete sales. I expect loan officers to
27 perform sales efforts between 8:30 a.m. and 5:00 p.m. Monday through Friday. I also expect them to
28

1 take a lunch break every day. They are not required to work any other hours unless they want to in
2 support of increasing their sales.

3 8. The loan officers that I supervise are not required to spend their work hours or
4 meet clients in any particular location. They have the discretion to develop clients and originate
5 loans in the manner that works best for them.

6 9. Loan officers at HSBC Mortgage are not supposed to depend on HSBC
7 Mortgage for referrals. Their job duty is to develop outside sources of business and to create their
8 own networks. Loan officers in the Long Island and Queens region get referrals from a number of
9 sources, including realtors, attorneys and networking groups.

10 10. HSBC Bank is one source for referrals. There are approximately fifty (50)
11 HSBC Bank branches in the Long Island and Queens region. I "assign" bank branches to loan
12 officers based on ability and geographical location. By "assign," I mean that any referrals that may
13 originate out of an HSBC Bank branch will go to the loan officer who is "assigned" that bank
14 branch. If a loan officer is a high producer and is sales savvy, I assign him or her to an HSBC Bank
15 branch that is within reasonable distance. Not all of the loan officers I supervise are assigned to
16 bank branches. Approximately twenty-six (26) loan officers in the Long Island and Queens region
17 are assigned to HSBC Bank branches. On average, each of those loan officers is assigned to two (2)
18 branches. Although I encourage the loan officers assigned to HSBC Bank branches to go to the
19 branch occasionally to put a face behind their names and to develop a relationship with the HSBC
20 Bank employees who may make a referral, they are not required to sit in the branches all of the time,
21 nor are they required to meet the clients referred by the bank at the bank branches.

22 11. When loan officers are hired by HSBC Mortgage in the Long Island and
23 Queens region, they receive High Trust Sales training through our WEBEX system. These trainings
24 can be done remotely on a computer. I also regularly send out "Best Sales Practices" emails that
25 contain advice and pointers from me. I do this as a means of continuing training of employees that I
26 supervise.

27 12. Until 2008, loan officers in the Long Island and Queens region were provided
28 with a monthly reimbursement amount for travel expenses and cellular phone use. As of 2008, loan

1 officers in my region will continue to receive a monthly reimbursement amount and will also be
2 provided with company cellular phones. Loan officers in the Long Island and Queens region do not
3 get Blackberries.

4 I declare under penalty of perjury under the laws of the States of California and New
5 York and the United States of America that the foregoing declaration is true and correct to the best
6 of my personal knowledge.

7 Executed this 18th day of January, 2008, in Stroudsburg, Pennsylvania.

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9 
10 DANIEL KILFOIL